IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8557 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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AHMEDABAD DISTRICT PANCHAYAT

Versus

PRAHLAD A PATEL

Appearance:

1. Special Civil Application No. 8557 of 2002

MR HS MUNSHAW for Petitioner No. 1

MR AS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/09/2002

ORAL JUDGEMENT

Rule. Mr Supehia learned counsel for the respondent waives service of Rule. With the consent of the learned counsel for the parties, the petition is taken up for final disposal today.

2. The petitioner was transferred from Viramgam to Dholera. It appears that the petitioner did not want to serve at the place of transfer. After joining Dholera on 1-11-1994, the respondent remained absent from 2-11-1994 and did not submit any leave report. It was thereafter only on 25-1-2001 that the respondent submitted the joining report which is at Annexure `A' to the petition. The respondent was not permitted to resume duty in view of such long unauthorised absence and the departmental inquiry has been initiated for terminating the respondent's services. The respondent went to the Gujarat Civil Services Tribunal and challenged the order issued by the DDO, Ahmedabad District Panchayat not permitting the respondent to resume duty. The said letter is permitted to be placed on the record at Annexure `F' to the petition. The Tribunal, however, construed it as an order terminating the respondent's services and quashed and set aside the said order with a direction to the petitioner- Panchayat to reinstate the respondent in service w.e.f. 25-1-2001 and to complete the departmental inquiry expeditiously.

3. Mr Munshaw, learned counsel for the petitioner has submitted that the Tribunal has erred in construing the order in question as an order of termination. The order merely states that because the respondent had remained unauthorisedly absent for a long period, he could not be permitted to resume the duty. It is submitted that the respondent had no right to resume duty and claim salary after such a long period of unauthorised absence without giving satisfactory explanation for the same.

4. On the other hand, Mr Supehia, learned counsel for the respondent submits that so long as the respondent's services are not terminated, the Panchayat is bound to permit the respondent to resume duty and that the respondent's services can be terminated only after holding a full-fledged departmental inquiry in accordance with law.

5. Having heard the learned counsel for the parties, it appears to the Court that when the respondent remained unauthorisedly absent for more than six years without submitting any leave report or without giving any intimation to the employer, while reporting for duty it is for the respondent to offer the explanation for unauthorised absence of such a long period. If such an explanation is found to be satisfactory, the employer would permit the employee to resume duty but if the

explanation is not found to be satisfactory, the employer would be justified in not permitting the employee to resume duty and also justified in terminating his services.

6. In a similar case before the Hon'ble Supreme Court in Punjab & Sindh Bank & Ors. vs. Sakattar Singh, 2001(1) SCC 214, the respondent in that case proceeded on sanctioned leave for three days but remained unauthorisedly absent for continuous period of 190 days. The appellate bank issued three letters to him directing him to rejoin the duty and ultimately the bank sought explanation for unauthorised absence in March, 1994. On 4-4-1994, the respondent submitted joining report mentioning that he had been suffering from eye ailment, to the Branch Manager who did not accept the joining report. Ultimately, the Bank passed the order of termination on 18-4-1994. When the termination order was challenged, the High Court held that the order of termination was a nullity on account of violation of principles of natural justice. In the appeal filed by the Bank, the Apex Court held that the principles of natural justice cannot be examined in vacuum without referring to the fact situation arising in the case. The Apex Court further held that in a situation like this there is no punishment for misconduct but only to notice realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto.

7. The facts of the instant case are also similar. Hence it cannot be said that the respondent is being punished for any misconduct. It is the respondent himself who would be in possession of the facts for explaining such long unauthorised absence of six years. It is not a case where the facts constituting misconduct would be within the knowledge of the employer that any evidence would be required to be led by the employer. The departmental inquiry in such a case would be an inquiry to find out whether the explanation offered by the employee is reasonable and worthy of acceptance. If such an explanation is accepted by the employer then naturally the employee would be permitted to resume duty but if the explanation is not accepted, the employee cannot have any right to join duty or to be taken back in service. He would have to face the order of termination in such a case.

8. It is true that the aforesaid case was a case of bipartite settlement which provided that in the event an employee absents himself from duty for 90 or more

consecutive days beyond the period of leave originally sanctioned or subsequently extended the management may, at any time thereafter, give a notice to the employee to the last known address calling upon him to report for duty within 30 days of notice stating, inter-alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duty and furnishing necessary evidence wherever relevant and unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining the duty, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the time fixed in the said notice. In the event of the employee giving a satisfactory reply, he will be permitted to report for duty thereafter within 30 days from the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

It is true that in the present case there is no such rule as incorporated in the aforesaid bipartite settlement but the principle laid down by the Hon'ble Supreme Court that the principles of natural justice cannot be examined in a vacuum is of general application and is not merely confined to the terms of a particular bipartite settlement.

As already stated by Mr Munshaw for the petitioner-Panchayat, a departmental inquiry is pending and will be concluded as expeditiously as possible.

9. In the facts and circumstances of the case while holding that the impugned order dated 27-12-2001 of the Gujarat Civil Services Tribunal was illegal as it was passed on a misconception of law and, therefore, setting aside the same, the petitioner-Panchayat is directed to complete the inquiry against the respondent as expeditiously as possible and in any case by 30th October, 2002.

11. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah,J)

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